

Items collected at July 21, 2016 meeting

recd
7-27-2016

7-21-17

Members of the Cascade County Zoning Board of Adjustments

I am "Chris" Christiaens, Project Specialist for Montana Farmers Union and stand in support of granting and Unclassified Use Permit allowing a solar power plant to move forward in Cascade County.

Montana Farmers Union is the oldest farm organization in the State, currently in its 101st year of activity representing over 12,000 members. There are many obstacles facing beginning farmers; lack of capital, lack of access to land, the prohibitive cost of health care, access to credit, shortage of business planning and marketing skills help, a necessity for off farm income, escalating farm values and other obstacles. Today that is exacerbated by low commodity prices for their crops versus input costs. This includes both commodities and livestock. Wheat and barley selling for under input costs and a cow that sold for \$2000.00 a year ago is now worth about \$1300.00. The future of the family farm is in jeopardy, with few opportunities for diversification.

I bring these figures up as many producers are facing difficult financial decisions and one of the opportunities to save them is a solar power plant. For the record, I am including an advertisement from the most recent Grain Growers newsletter, where a lease pays considerably more than a farm raising small grains could earn in today's market.

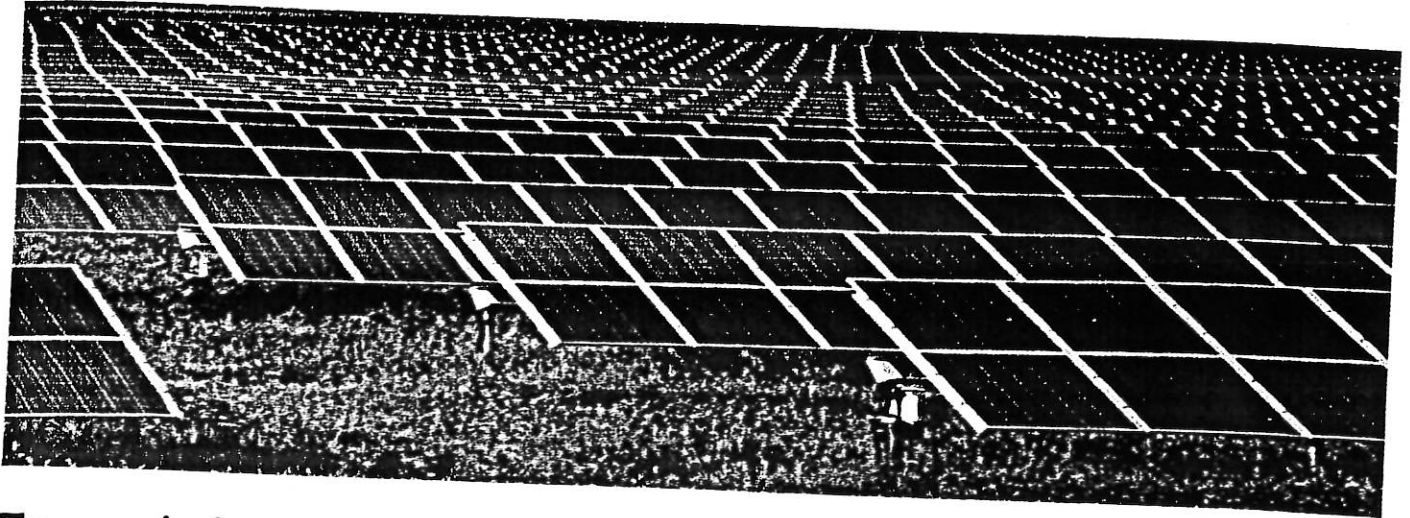
From my personal experience, I have had solar at my home since 1994 and with solid results and with updates in solar since that time, they are even more efficient. My neighbors are not even aware that I have solar unless they are a guest in my yard. The future holds a host of opportunities for any consumer of electricity at an affordable price.

Montana Farmer's Union supports permitting solar power on tracts of land not just in Cascade County but across the State.

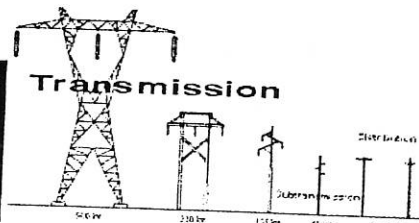
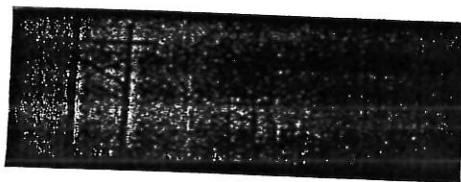
Chris Christiaens

Innovative Solar Systems

Can We Lease Your Land for Our Solar Farms?



Transmission Type Power Lines on Your Land? Lease to Us Today!



Large Power Lines on Your Property? Lease Us Your Land!

We Will Pay Up to \$1,250 per Acre per Year

20 to 40 Yr. Lease

We Require Large Tracts of Land currently clear clean land (Over 250 Acres) w/ 3Phase Transmission Type Power Lines on the land for Our Solar Farms
Land Cannot be in Flood Zone or Have Wetlands Issues – Owner Must Retain Mineral Rights both above and below surface or have Executive Rights

No underground utilities including oil and gas lines within the proposed solar site

Long Term Land Leases Needed-(20 – 40 Years Up to \$1,250 per Acre per Year)

CALL (828)-817-5400 or (828)-817-9101

Email Us at InnovativeSolarFarms@gmail.com

Visit our website at www.InnovativeSolarFarms.com

North Carolina Court of Appeals

Docket Sheet

Dellinger v. Lincoln Cty.

Case Number: 15-1370

As of: 07/21/2016

Case Closed: No

Close Date:

Case Type: Civil (Civil_othr)

Mediation: No

GARY DELLINGER, VIRGINIA
DELLINGER, and TIMOTHY S.
DELLINGER,

Petitioners,

vs.

LINCOLN COUNTY, LINCOLN
COUNTY BOARD OF COMMISSIONERS,
and STRATA SOLAR, LLC,

Respondents,

and

TIMOTHY P. MOONEY,
MARTHA McCLEAN, and
THE SAILVIEW OWNERS
ASSOCIATION,

Intervenor Respondents.

Docket Date: 12-21-2015

File Date: 12-21-2015

File Time: 08:30

Acquired Date: 12-21-2015

Bond Collected: Yes

Docket Fee: Yes

Pauper: No

Print Deposit: No

State Appeals: No

History

Venue: Lincoln (27B)

Heard In: Superior Courts

To SC:

From SC:

Lower Court Number(s)

Location: Lincoln (27B)

Judge: Yvonne Mims Evans

Case #: 15CVS384

Tracking/Argue

Argue Date: 05-24-2016 #

Opinion

Opinion Date: 07-19-2016 **Cert Date:** 08-08-2016

Author: Honorable John M. Tyson

Decision: Affirmed in Part, Reversed in Part and Remanded

Opinion Notes:

Opinion Pages: 22 **Opinion Cost:** \$ 4.40

Cite:

Slip Opinion: <https://appellate.nccourts.org/opinions/?c=2&pdf=34306>**Documents**

Document	Date Recvd	Cert of Service	Rec/Brf Due	Resp. Due	Resp. Recvd	Mailed Out	Ruling	Ruling Date
(1) RECORD	12-21-2015	12-16-2015				12-21-2015		
(2) M-EXT-BR	01-11-2016	01-11-2016					Allowed	01-12-2016
(3) APPELLANT BRIEF	02-19-2016					02-22-2016		
(4) M-EXT-BR	03-09-2016	03-09-2016					Allowed	03-10-2016
(5) APPELLEE BRIEF	04-11-2016					04-12-2016		

1 - RECORD

Filed: 12-21-2015 @ 08:30:00

FOR: Appellant Dellinger, Gary, et al

BY : Mr. Jason White

SIGMON, CLARK, MACKIE, HANVEY & FERRELL, P.A.

2 - MOTION FOR EXTENSION OF TIME TO FILE BRIEF (Allowed) - 01-12-2016

Filed: 01-11-2016 @ 12:52:51

FOR: Appellant Dellinger, Gary, et al

BY : Mr. Forrest A. Ferrell

SIGMON, CLARK, MACKIE, HANVEY & FERRELL, P.A.

The following order was entered:

The motion filed in this cause on the 11th of January 2016 and designated 'Motion for Extension of Time to File Brief' is allowed. Plaintiff-appellants' brief shall be filed on or before 19 February 2016.

By order of the Court this the 12th of January 2016.

3 - APPELLANT BRIEF

Filed: 02-19-2016 @ 15:56:12

FOR: Appellant Dellinger, Gary, et al

BY : Mr. Jason White

SIGMON, CLARK, MACKIE, HANVEY & FERRELL, P.A.

4 - MOTION FOR EXTENSION OF TIME TO FILE BRIEF (Allowed) - 03-10-2016

Filed: 03-09-2016 @ 15:03:45

FOR: Appellee Mooney, Timothy P., et al

BY : Mr. James E. Scarbrough

SCARBROUGH & SCARBROUGH, PLLC

The following order was entered:

The motion filed in this cause on the 9th of March 2016 and designated 'Motion for Extension of Time to File Brief' is allowed. Intervenor-Respondents-Appellees' brief shall be filed on or before 11 April 2016.

By order of the Court this the 10th of March 2016.

5 - APPELLEE BRIEF

Filed: 04-11-2016 @ 14:53:49

FOR: Appellee Mooney, Timothy P., et al

BY : Mr. James E. Scarbrough

SCARBROUGH & SCARBROUGH, PLLC

Financial Information**Receipts**

Date Charged	Charge Type	Amount Charged	Amount Paid	Document	Pages	Receipt #	Date Paid
12-21-2015	Docket Fee	10.00	10.00			R122029315	12-21-2015

12-21-2015	Bond	250.00	250.00			R122029315	12-21-2015
12-21-2015	Printing	761.25	761.25	RECORD	435	R012004616	01-07-2016
02-22-2016	Printing	197.75	197.75	APPELLANT BRIEF	113	R022035116	02-29-2016
04-12-2016	Printing	75.25	75.25	APPELLEE BRIEF	43	R042044316	04-18-2016
07-19-2016	Assess	390.12	0.00				

Payments

Payment Date	Payment Type	Amount	Check Number
	Disburse	245.50	0

Exhibits

Transcript; Pgs 1-260

Parties

Party Name	Role
Dellinger, Gary	Petitioner-Appellant
Dellinger, Virginia	Petitioner-Appellant
Dellinger, Timothy S.	Petitioner-Appellant
Lincoln County	Respondent-Appellee
Lincoln County Board of Commissioners	Respondent-Appellee
Strata Solar, LLC	Respondent-Appellee
Mooney, Timothy P.	Intervenor-Appellee
McClellan, Martha	Intervenor-Appellee
The Sailview Owners Association	Intervenor-Appellee

Attorneys**Attorney for Appellant - Dellinger, Gary, et al**

Mr. Forrest A. Ferrell [Primary Attorney]

Attorney at Law

forrest.ferrell@sigmonclark.com

Mr. Jason White [Primary Attorney]

Attorney at Law

jason.white@sigmonclark.com

SIGMON, CLARK, MACKIE, HANVEY & FERRELL, P.A.

420-B Third Avenue, NW

P.O. Drawer 1470

Hickory, NC 28603

(828) 328-2596

Attorney for Appellee - Lincoln County, et al

Mr. Wesley L. Deaton [Primary Attorney]
Attorney at Law
wdeaton@deatonlegal.net
PENDLETON, PENDLETON & DEATON, P.A.
P.O. Box 2459
Denver, NC 28037
(704) 489-2491

Attorney for Appellee - Mooney, Timothy P., et al

Mr. James E. Scarbrough [Primary Attorney]
Attorney at Law
jes@sandslegal.net
SCARBROUGH & SCARBROUGH, PLLC
137 Union Street South
Concord, NC 28025
(704) 782-3112

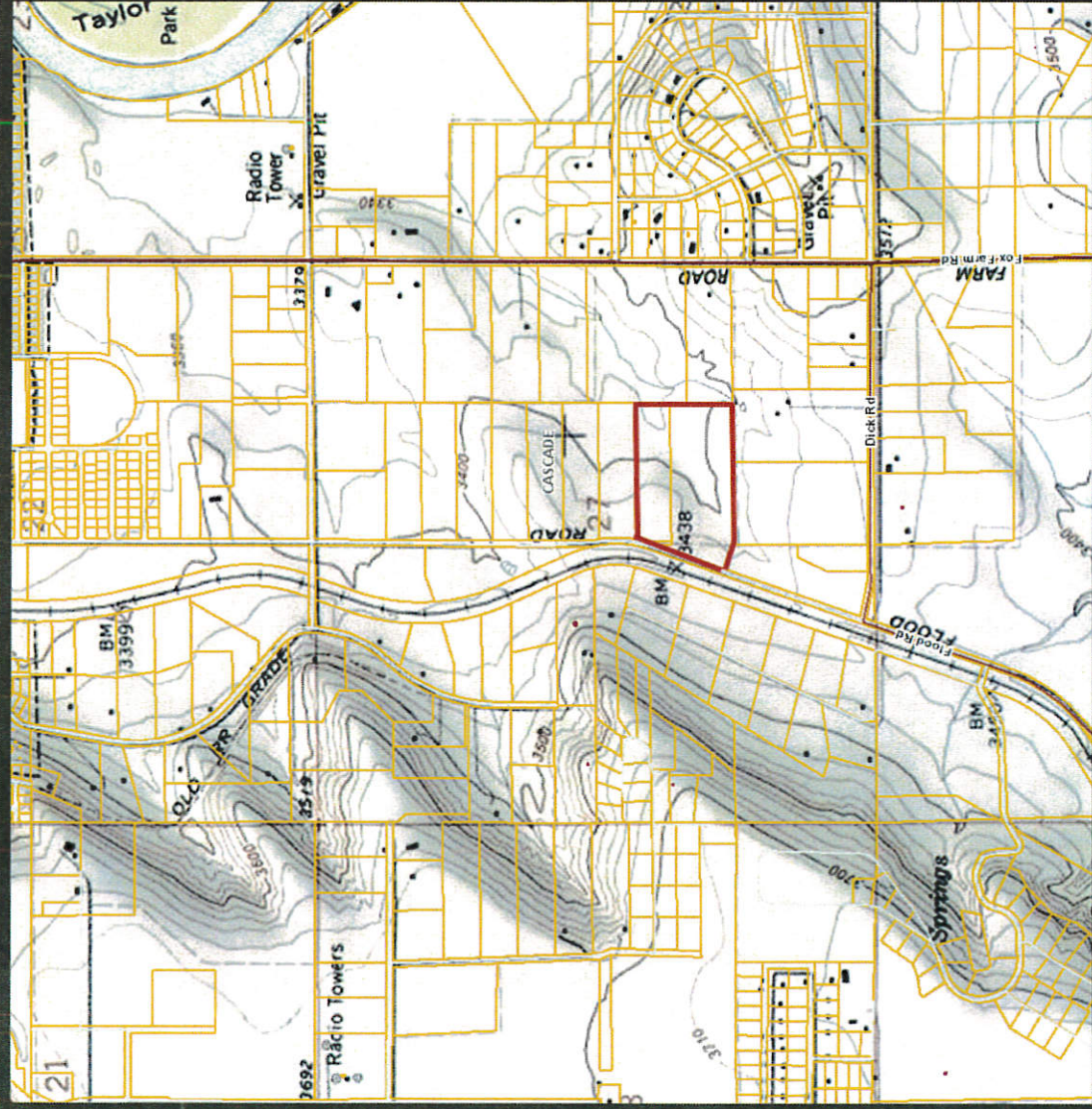
red 7-27-2016

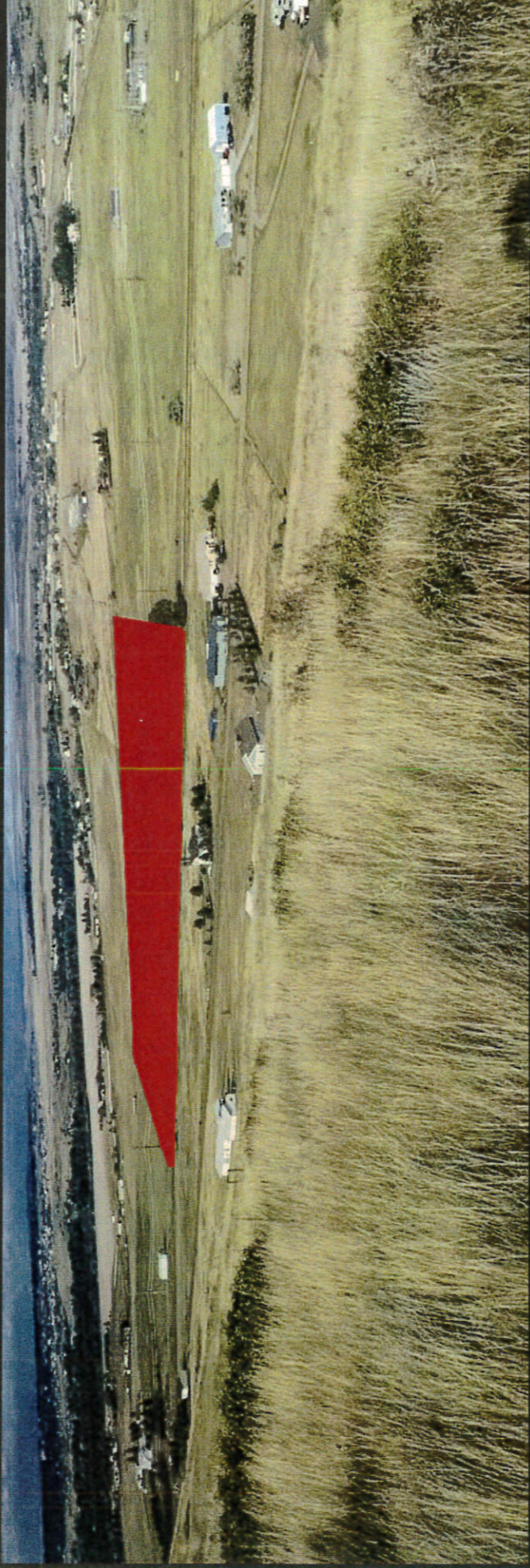
FOX POWER PLANT

A CLOSER EXAMINATION

- COMPARATIVE ANALYSIS NOT RELEVANT TO FOX POWER PLANT
- FOX POWER PLANT SITE NOT HARMONIOUS WITH EXISTING USE
- NEIGHBORHOOD AND ADJOINING PROPERTY VALUES SUBSTANTIALLY IMPACTED

TOPOGRAPHICAL MAP
SHOWING GREAT ELEVATION
VARIANCE MAKING
LANDSCAPE SCREENING
MITIGATION INEFFECTIVE





VIEW OF POWER PLANT FROM RESIDENCES

MONTANA PUBLIC SERVICE COMMISSION PRESS RELEASE – June 16, 2016

Montana's consumer advocate concerned with effect current solar energy price has on ratepayers

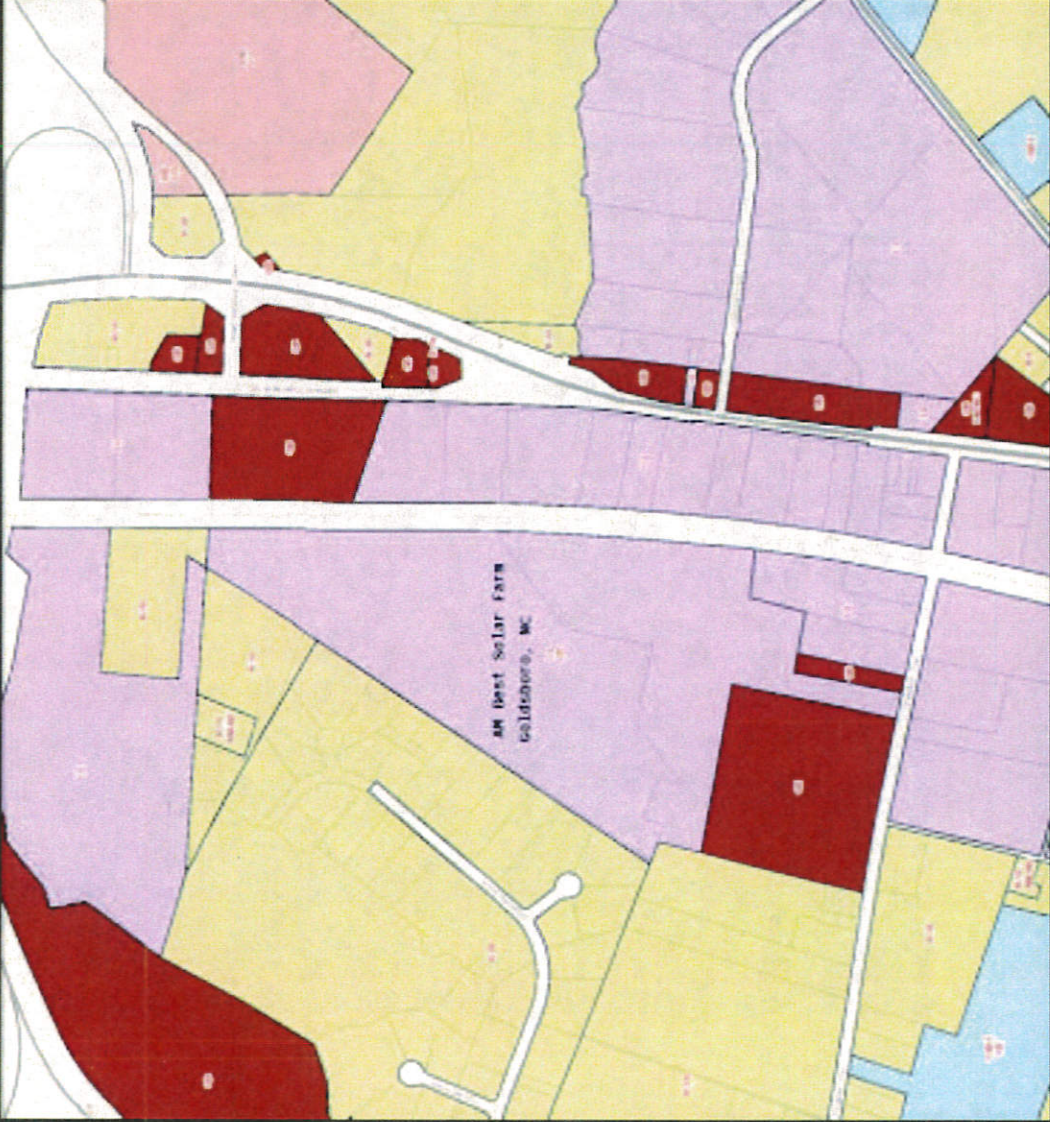
"Our action today to protect NorthWestern Energy's customers from unreasonably priced solar power is a compromise that still allows solar energy development to continue across the state," said PSC Chairman Brad Johnson, R-East Helena. NorthWestern Energy submitted testimony to the Commission estimating that anticipated small solar projects could create over \$215 million in additional costs to their customers over the next 25 years if the PSC didn't suspend the current rate of \$66 per megawatt hour.

Speaking to the Commission's decision, Commissioner Roger Koopman, R-Bozeman, said, "I totally agree with the Montana Consumer Council, that the Commission needed to take swift and decisive action in defense of ratepayers. These outdated standard rates are so inflated that consumers are taking huge hit. Meanwhile, out-of-state solar developers are flooding into Montana, anxious to capture the windfall profits...."

BILLINGS GAZETTE – June 10, 2016

The mandated price it [NorthWestern Energy] must pay to small commercial solar projects of 3 megawatts or less is too high and hurting consumers. The projects, known as qualifying facilities, or QFs have been popping up like dandelions because Montana's guaranteed rate is too generous, according to the utility.

"For each 3 megawatt project, the differential between the QF rate and the rate we propose is about \$5 million per solar contract," said John Alke, NorthWestern Attorney.

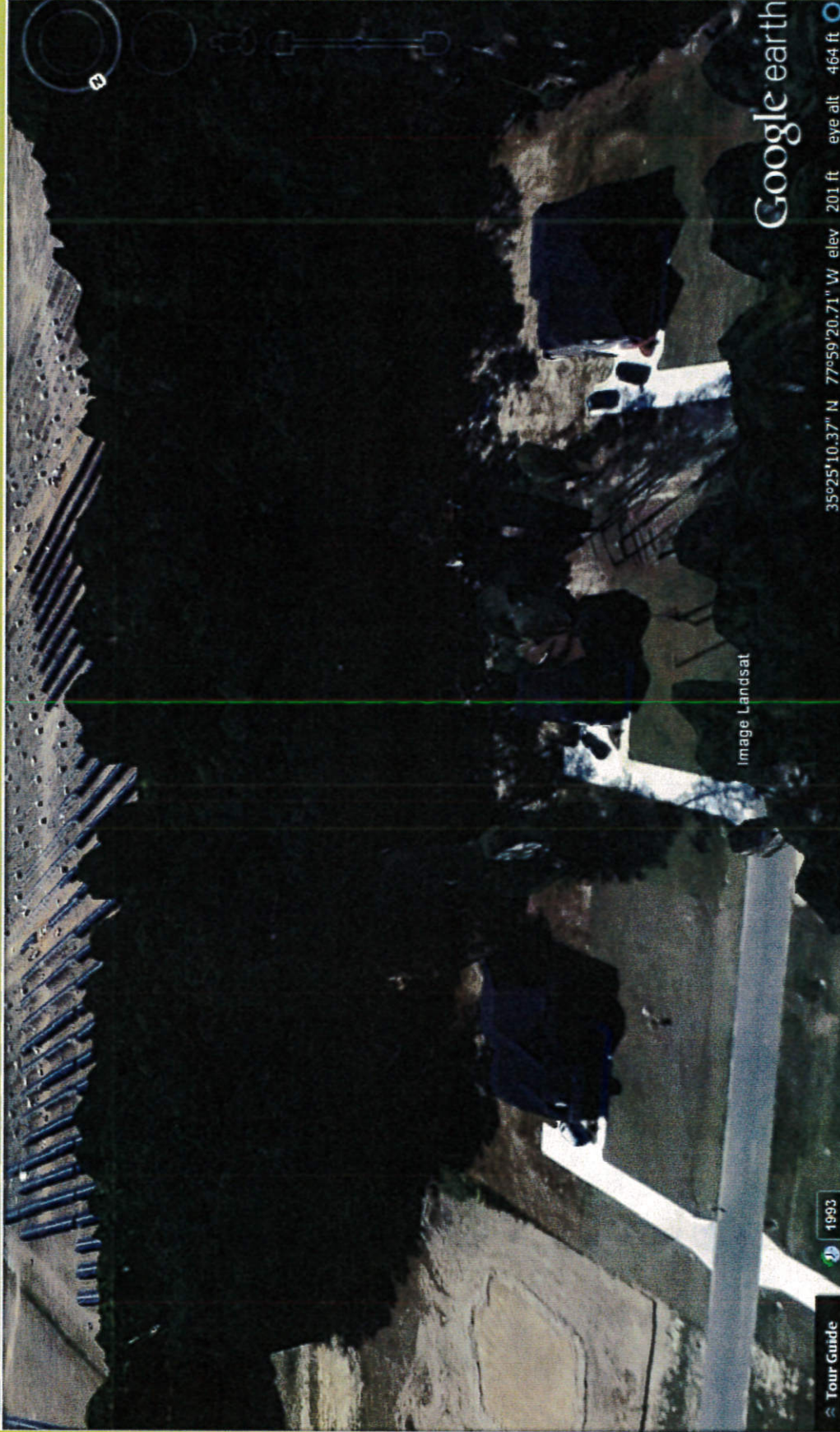


INDUSTRIAL
COMMERCIAL/ BUSINESS
RESIDENTIAL
HIGHWAY BUSINESS DISTRICT

INDUSTRIAL ZONING SITE

CONTRASTED TO

SUBURBAN RESIDENTIAL
OF FOX SOLAR PLANT





WHITE CROSS SOLAR PLANT, NC



HEAVILY WOODDED AREA CLEARED FOR
WHITE CROSS POWER PLANT

POWER PLANT LOCATED IN 594 ACRE PARCEL



NOTE: INDUSTRIAL
TIMBER MILL OPERATION
TO WEST OF MULBERRY





© 2016 Google
 Images & photos

35° 48' 29.66" N, 88° 22' 22.67" W, 420 ft, 420 ft, 420 ft

Google Earth

VIEWS OF NEAREST HOMES TO MULBERRY POWER PLANT SHOWING MATURE SCREENING



© 2016 Google
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Images & photos

Google Earth



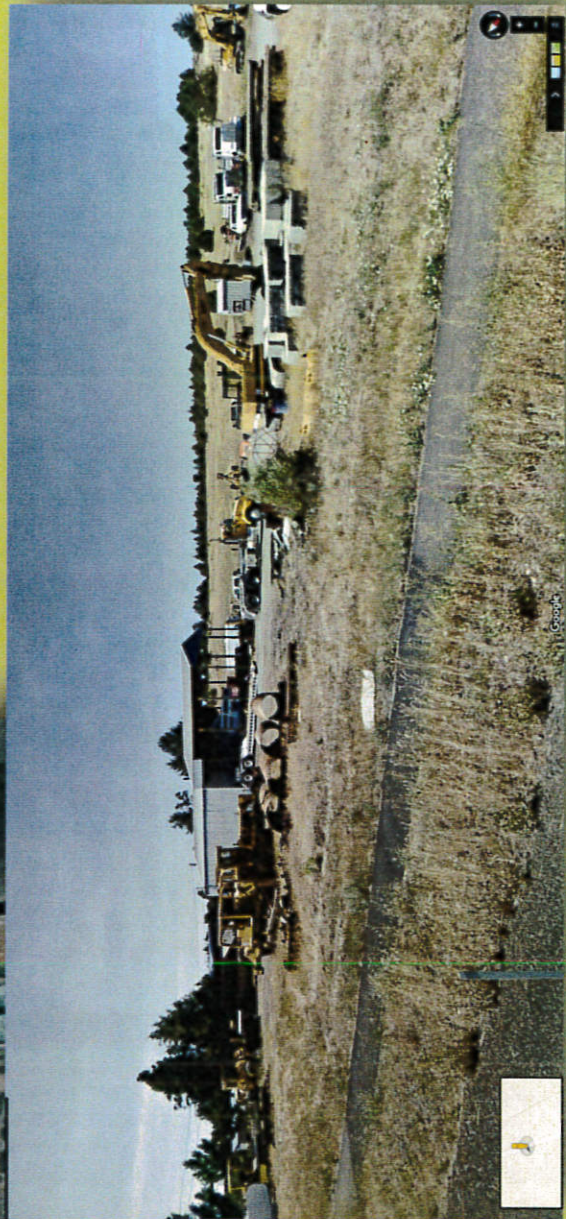
KINGS ESTATE WINERY
NEAR EUGENE, OR

SOLAR PLANT ENCLOSED WITHIN 652 ACRES OWNED BY KINGS ESTATE

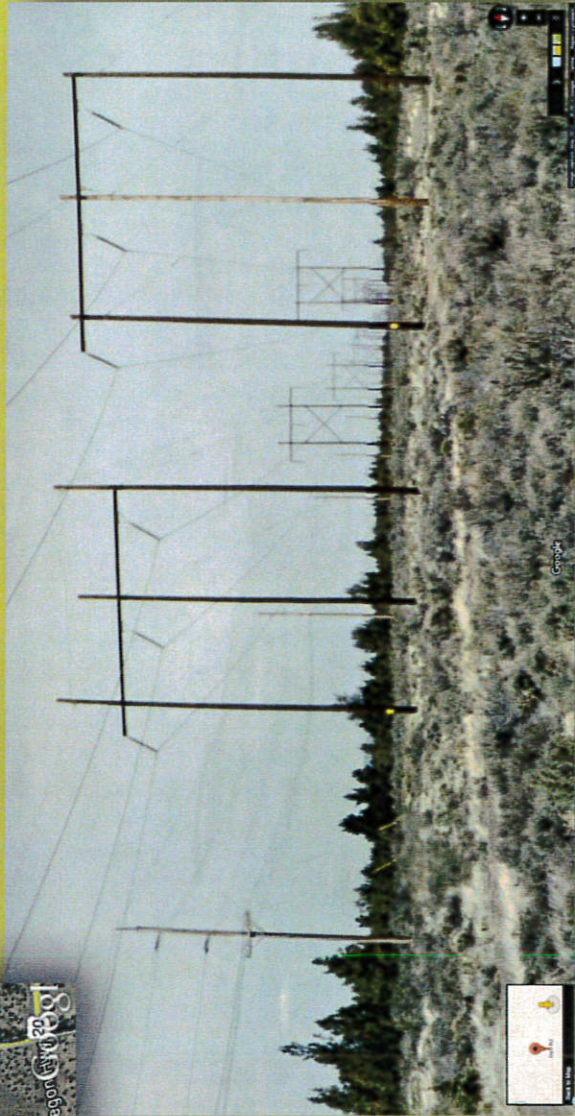


OLD MILL SOLAR PLANT
BLY, OR

NOTE: TERRAIN, 3 ADJACENT
INDUSTRIAL USES,
AND PRIVATE AIRSTRIP



NEFF/COLLIER PROPOSED POWER PLANTS BEND, OR



VIEW FROM NEFF ROAD

“It is likely that a solar farm would have a negative impact on specific property values in cases where the nearby property has an exceptional unblemished view of the Cascades or a river.”

-GREGORY W. MOORE, MAI
BEND, OR ANALYSIS



JOKI
& ASSOCIATES
Real Estate Appraisers



J. Michael Joki, MAI, SRA

July 21, 2016

Tim Wilkinson
56 Spring Tree Road
Great Falls, MT

RE: Proposed Fox Solar Farm in Great Falls, MT.

Dear Mr. Wilkinson,

Per your request I have reviewed a number of documents you provided me and I will provide my opinion of how the data in these documents could pertain to the proposed Fox Solar Farm that would be located in the 5300 block of Flood Road in Great Falls, MT. The scope of work involved a review of the documents provided to me, viewing of the proposed Fox Solar Farm site, and a viewing of nearby properties. The purpose of the review of the documents is to give my opinion of their pertinence to the Fox Solar Farm site in Great Falls, MT. The intended use of this assignment is to assist my client, Tim Wilkinson, with decisions regarding the proposed Fox Farm Solar development. The effective date of this assignment is July 21, 2016. I have not been asked to assign any value to any specific property, and I have not done so.

As I understand the Fox Solar Farm will have a +/-30 acre footprint of solar panels on a site being leased from Dave and Andrea Pierce. The adjoining land is a mix of rural residential and limited agricultural use, and land closest to the proposed site is near 3,400' elevation and the surrounding hillside sites are at 3,500' to 3,700' elevation. The proposed site is on the east side of Flood Road, north of Dick Road and south of 45th Avenue SW in a relatively low lying area.

I was provided a copy of a study completed by Richard C. Kirkland, Jr., MAI from Raleigh, North Carolina. Mr. Kirkland's study was completed for a proposed solar facility in Oregon with the purpose to determine if there is any impact to the surrounding properties due to this facility. Reportedly Mr. Kirkland has visited approximately 200 solar projects around the country with many being near his home state of North Carolina. Mr. Kirkland uses paired sales analysis to support his findings with very extensive research at four different locations. It is very obvious there is much more market data readily available in the North Carolina area than here in Montana.

because solar farms are a relatively new industry or property type to our state. None the less, Mr. Kirkland was able to conclude that he found no supportable impact to property values in the areas he studied. As noted in the Kirkland study, in more densely populated areas setbacks and landscape screening is being used to mitigate any potential adverse impacts to surrounding properties. I was provided a copy of the letter completed by Tim Moore from Moore Appraisal Firm in Helena, MT. Mr. Moore has reviewed Mr. Kirkland's study and stated that the Portage Project, another proposed site in Great Falls, is much more typical of the sites noted in Mr. Kirkland's report.

The next document I was provided is a copy the Kirkland consulting report completed for the Fox Solar site itself. Mr. Kirkland briefly describes the proposed use of this facility and then concludes through his matched paired analysis of data extracted from the Oregon, North Carolina and Texas markets that there should be no impact to the property values surround the Fox Solar site in Great Falls, MT. Mr. Kirkland's conclusions from the other market areas appears to be well supported but do they necessarily translate to the real estate market in Montana.

Next I was provided a copy of the court of record's decision upholding the Board of Adjustments decision in the matter of Dellinger vs. Lincoln County, State of North Carolina. In this decision it is noted that opponents to a solar farm application presented evidence from Clay County, NC showing assessments on 19 properties in a neighborhood adjacent to a solar farm were reduced by 30%. Like Mr. Kirkland information, this may or may not directly apply to our local real estate market, but does show an example of where there is an impact to value from a nearby solar farm. Furthermore, in this same decision, two appraisers submitted testimony that higher priced home buyers are pickier and thus more apt to view "ugly" views more negatively than a moderate price home buyer. I did interview the appraiser Geoffrey Zawtocky to confirm his comments.

Next I was provided a copy of the consultation completed by Greg Moore, MAI of two proposed solar farms in Bend, Oregon. In this report Mr. Moore identifies a number of solar farms in the Pacific Northwest and addresses potential impact issues. Mr. Moore concludes that solar farms are likely to be compatible with adjoining residential and agricultural uses, however he noted that a solar farm would have a negative impact on specific property values in cases where the nearby property has exceptional, unblemished views of the Cascade Mountains or a river. Obviously a view of the Cascade Mountains are specific to the Bend, Oregon area. But, views of the High Wood and Little Belt Mountains to east, the rolling hills and valley to the west, and the Missouri River to the south of the proposed Fox solar facility in Great Falls, MT would be pertinent.

It is no secret in the real estate industry that higher priced home buyers tend to be more sensitive to issues like view impairment, proximity to incompatible sites, proximity to interstates or airports, etc. The homes located in Henry's Lane, Spring Tree and Lark Spur developments have values that range between approximately \$300,000 and \$1,000,000. These developments are elevated anywhere from 50' to nearly 300' above the proposed Fox Solar site and look directly onto this area. I spoke with Bruce Forde, from Forde Landscaping and reportedly the landscape plan for this development will only provide minimal mitigation. Apparently the ponderosa pine

trees will be planted 90' apart and will be in-filled with shorter trees and shrubs which may suffice for ground level mitigation but does not account for the change in elevation for those home in the aforementioned residential subdivisions located above and directly to the West.

As shown in the Cascade County Zoning Regulations the site for the proposed Fox Solar facility is zoned SR-1 Suburban Residential. It is my understanding the proposed use of this site could be allowed as an Unclassified Use as shown on page 159 and 160 of the regulations. As explained in the Considerations section "a proposed development will not substantially impact the value of adjoining properties, and a proposed development will be in harmony with the adjoining properties". In the case studies provided to me the solar farms being studied were typically found to be harmonious with the surrounding uses but in many cases they were well surrounded with mature landscaping and often out of view. In the case of the Fox Solar site without significant landscape mitigation surrounding this site the nearby hillside home sites will have a direct view of the facility and over time this may influence market values. The aforementioned appraisers who have conducted these studies must have found this to be an important factor because view/appearance is addressed in each of the studies.

It has been extensively discussed there is no paired sales data from the Montana market to analyze because solar facilities are simply still new to this market. But, just because market participants in other real estate markets show little to no impact from a solar facility does not necessarily mean that will be the case here in Great Falls under these circumstances.

Reportedly there are approximately 65 homes and 140 residential lots within a ½ mile radius of the proposed Fox Solar development and I would caution those making decisions about this facility to simply apply the findings in the other solar facility studies to the Great Falls market. I'm not saying these studies are not well researched and not applicable to their own appraisal problem but the issue of view/appearance in these studies may not directly apply to the situation here in Great Falls, MT.

I have been appraising real estate for 29 years and found when appraising unique properties market data from other markets may have to be considered. Every county, city and state has its own set of influences and as long as "apples are being compared to apples" the market data can be reliable and applicable to the appraisal problem at hand. However the influences, whether they are physical or economic, have to be properly addressed applied to the appraisal problem.

If you have any further questions regarding this matter please feel free to call.

Sincerely,



J. Michael Joki, MAI, SRA

Certification

I CERTIFY THAT:

1. The statements of facts and data used in this report are, to the best of my knowledge, true and correct.
2. The reported analysis, opinions and conclusions were developed and this report has been prepared in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice.
3. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
4. As of the date of this report, I, J. Michael Joki, have completed the requirements of the continuing education program of the Appraisal institute and those of the Montana State Board of Real Estate Appraisers.
5. Regarding the competency provision of USPAP, I further attest that over the past 29 years I have written appraisal and review appraisal reports for clients that pertain to various locations and various property types in Montana.
6. I have personally viewed the subject property. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three year period immediately preceding acceptance of this assignment.
7. I have no direct or indirect present or contemplated future personal interest in the subject property beyond my responsibility as a review appraiser.
8. I have no bias with respect to the property that is the subject of the report or to the parties involved with this assignment.
9. Neither my employment or compensation is contingent on an action, event or value resulting from the analyses, opinions, or conclusions contained in this report.
10. My conclusions have been reached independently based on the report and other data of record without collaboration or direction, except as outlined within the attached remarks.
11. No one provided significant appraisal assistance to the person signing this certification.
14. I am currently licensed in the State of Montana (Certificate #152) as a Certified General Real Estate Appraiser.

Date: July 21, 2016

Signature: _____



J. Michael Joki, MAI, SRA

J. MICHAEL JOKI, MAI, SRA
State of Montana, Certified General #152
P.O. Box 281
Helena, MT 59624

APPRAISER'S QUALIFICATIONS

EMPLOYMENT: January 1992 to present; Employed by Joki & Associates, a general practice real estate appraisal firm.

July 1987 to January 1992; Employed by Peyton & Peyton, Inc., a general practice real estate appraisal firm.

June 1986 to September 1986; Employed by Gerald D. Peyton, SRA, Fullerton, CA, as an appraiser trainee.

EDUCATION: Bachelor of Science degree in Business Administration, Management major, Montana State University, Bozeman, MT, June, 1987

Specialized Real Estate courses:

Market Analysis and Highest and Best Use:
Appraisal Institute, May, 2014

Report Writing and Valuation Analysis:
Appraisal Institute, October, 2000

Advanced Applications:
Appraisal Institute, October, 2000

Advanced Income Capitalization:
Appraisal Institute, July, 1999

Condemnation Appraising:
Basic Principals and Applications
Appraisal Institute, March, 1999

Condemnation Appraising:
Advanced Topics and Applications
Appraisal Institute, March, 1999

Litigation Skills for the Appraiser:
Appraisal Institute, April, 2000

General Applications:
Appraisal Institute, June, 1997

Basic Income Capitalization:
Appraisal Institute, April, 1997

Basic Valuation Procedures:
Appraisal Institute, May, 1992

EDUCATION: (cont.)

Residential Valuation:
American Institute of Real Estate Appraisers, January, 1988

Real Estate Appraisal Principles:
American Institute of Real Estate Appraisers, October, 1987

PROFESSIONAL DESIGNATIONS:

MAI, Appraisal Institute, August, 2003
SRA, Appraisal Institute, August, 1992

STATE CERTIFICATION:

State of Montana Certified General #152, Issued June, 1999
State of Montana Certified Residential #152, Issued July, 1992

TYPICAL APPRAISALS:

Multi family, office, retail, special purpose, subdivisions and vacant land,
eminent domain.

CONTINUING EDUCATION WITH APPRAISAL INSTITUTE (past 15 years):

Analyzing Operating Expenses, March, 2012
USPAP Update Course, January, 2012
Attacking and Defending an Appraisal in Litigation, May, 2011
Discounted Cash Flow Model, October, 2010
USPAP Update Course, February 2010
Appraisal Curriculum Overview, September 2009
Business Practice and Ethics, January 2009
Office Building Valuation, September 2008
USPAP Update Course, January 2008
Effective Appraisal Writing, March 2007
Subdivision Valuation, September 2006
Business Practice and Ethics, March 2006
Scope of Work, September 2005
Evaluating Commercial Construction, September, 2004
Separating Real and Personal Property, October, 2003
Standards for Federal Land Acquisitions, January 2003
Partial Interest - Undivided, April 2002
Standards of Professional Practice, Part C, January 2002
Partial Interest--Divided, September, 2001
Partial Interest--Undivided, April, 2002
Marshall & Swift Valuation Guides, May, 2000
Data Confirmation Methods
Small Hotel/Motel Valuation
Eminent Domain and Condemnation Appraising

- * Education Chairman, Montana Chapter of the Appraisal Institute, January, 1996 to September, 2000.
- * Appointed to National Educational Programs Committee, Appraisal Institute, 1999 to 2002.
- * Vice President, Montana Chapter of the Appraisal Institute, 2004 - 2005.
- * President, Montana Chapter of the Appraisal Institute, 2006-2007
- * Finance Officer for Region 1 of the Appraisal Institute, 2009-2013

CLIENTS:

State of Montana, Department of Transportation
 U. S. General Services Administration
 Albertsons, Inc.
 Montana Fish, Wildlife, and Parks
 Lolo National Forest
 WGM Group—Engineering Firm
 Robert Peccia & Associates—Engineering Firm
 Montana Tech College
 Montana Board of Investments
 City of Helena
 Lewis and Clark County
 Helena School District #1
 Jefferson County
 Northwestern Energy - Montana Power Company
 Southern Montana Electric
 State of Montana, Department of Military Affairs
 Louisiana Pacific Corporation
 Diocese of Helena
 Toyota Financial Services
 CB Richard Ellis
 Wells Fargo Bank
 US Bank
 Valley Bank of Helena
 Rocky Mountain Credit Union
 Whitefish Credit Union
 Mountain West Bank
 Glacier Bank
 Commonwealth Land Title Insurance Company
 Prickly Pear Land Trust
 The Trust for Public Land
 Numerous private investors and attorneys.

JACK H BLAINE AND RITA M THEISEN
9 STONERIDGE LN
GREAT FALLS, MT 59404

recd
7-21-2016



21 July 2016

Cascade County Zoning Board of Adjustments
325 2nd Ave. North
Great Falls, MT 59401

Re: Petition for Unclassified Use Permit for Solar Power Plant

Dear Board Members:

We oppose the petition of Cypress Creek Renewables, LLC (a Delaware corporation with its principal place of business in Santa Monica, CA) for an "unclassified use permit" to construct a solar power plant in a suburban residential neighborhood. This use would not have been permitted in an SR-1 or SR-2 district under any circumstances had the County not recently put all its residential zoning protections at risk with the creation of a new "unclassified use permit."

While the new type of permit opens up all zones to previously impermissible uses, it is subject to conditions, ALL of which must be met for the permit to be issued. [Cascade County Zoning Regulations, §18 and §18.8.] The petition clearly fails at least two of the conditions, thus requiring the Commission to reject it.

1. The proposed development is not a public necessity, and it will substantially impact the value of adjoining property. [§18.5.2]

Great Falls does not "need" a solar power plant, and even if it did the power plant would not "need" to be located in a suburban residential neighborhood.

Far from being a public necessity, the proposed solar plant will benefit primarily the developers and will actually cost taxpayers and Montana ratepayers. It is highly doubtful that this project would be economically feasible but for large federal tax credits (26 U.S.C. §48 provides a 30% tax credit on capital invested in commercial solar energy projects) and mandatory power purchasing agreements (PPAs) required by the Public Utility Regulatory Policy Act (16 U.S.C. §824a-3) and implemented by state public service commissions.

The Montana Public Service Commission has acted to stem the flow of out-of-state developers seeking to profit from skewed PPA rates. See MPSC press release dated 16 June 2016, noting the MPSC objective to protect energy consumers "from unreasonably priced solar power." Petitioner acknowledges that the MPSC's actions have diminished its appetite for constructing these

types of projects in Montana. *Great Falls Tribune*, 30 June 2016.¹ Surely it is not a “public necessity” that Petitioner reap solar energy profits from this project at the expense of the local populace.

One reason – perhaps the primary reason -- for selecting this particular residential site is its proximity to existing power lines, minimizing Petitioner’s costs to maximize its profits. The petitioner is putting profit ahead of the concerns of County residents who object to power plants in their residential neighborhoods.

The proposed solar plant will also have a substantial adverse impact on the value of adjoining property. Its proposed location in the valley of the winding Missouri River is home to hundreds of residents who chose their home sites in large part because of the long and wide vistas for which Big Sky country is renowned. Dropping a solar farm in their midst – let’s face it, they aren’t pretty -- spoils the landscape views they paid for. A family looking for a view from their home is hardly going to pay a premium to gaze upon a solar power plant.

It is not relevant for the Petitioner to claim that solar developments in other communities have not adversely affected property values at those locations. What is crucial is the effect of this project at this location. Given the special topography of the valley site surrounded by elevated home sites, it is simply not credible that there would be no significant effect on property values.

2. The proposed development will not be in harmony with the area in which it is located. [§18.5.3]

Harmony: “a pleasing or congruent arrangement of parts.” [Merriam-Webster Dictionary]

In large measure, the above discussion of property values also demonstrates the failure of this project to be in “harmony” with the area in which it is located. There is nothing pleasing about a solar farm in a residential neighborhood. There is nothing congruent about erecting 17,000 solar panels (approx. 306,000 sq. ft. or seven acres worth) among homes and farms on the banks of a majestic river. There is no way to disguise seven acres of solar panels on the valley floor from the elevated views of homeowners on all sides.²

A pig in the barnyard is harmonious, a pig in the parlor is not. See Village of Euclid v. Ambler Realty Co., 272 US 365, 388 (1926). What we have here is a pig in the parlor.

¹ Petitioner posits in the same article that its projects “will provide long-term increased tax revenue for Cascade County.” Whether or not this is true, it is irrelevant. Tax revenue is not a factor to be considered in the applicable regulations.

² Petitioner recognized that not every multi-acre vacant parcel is appropriate for a solar farm when it withdrew its application for a conditional use permit in Marion County, Oregon earlier this year. [Reported in *Statesman Journal*, 15 March 2016.]

There may be other disharmonious aspects to the project, such as the possible need for infrastructure components including new power lines, energy storage or backup systems, as well as maintenance of the site and eventual decommissioning and disposal of the solar components.

Petitioner must demonstrate that it meets ALL conditions identified in the unclassified use permit rules.³ It fails with regard to public necessity, property valuations, and harmony. The Board must therefore reject the petition.

In addition, §18.6 requires that “[o]perations in connection with the Unclassified Use permits shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations or flashing lights, than would be the operation of any permitted use.” Solar plants require inverters to convert direct current to alternating current for transfer to the power grid. Inverters make noise during energy production. [See Case # CU 15-035, Marion County, Oregon Order, ¶24, p.20].

At least one discussion of Petitioner’s lease agreements on solar power projects in another state indicates that noise, vibrations, glare and similar issues are likely to arise. “Section 20 of the lease gives the solar farm ‘an easement over, under and across the Landlord’s adjacent property for audio, visual, view, light, flicker, noise, vibration and any other effects attributable to the Intended Use of the Premises.’” [<http://naturalgasnow.org/the-renewables-industry-green-eggs-and-scam/>].

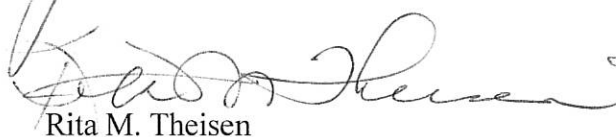
If Petitioner considers it necessary to protect itself from liability from “audio, visual, view, light, flicker, noise, vibration and any other effects” from the solar plants it constructs on leased property, it is essential to determine whether its operations will be “more objectionable to nearby properties by . . . than would be the operation of any permitted use” of the property.

The proposed solar project is unnecessary, unsightly, and unwanted. It is totally out of character for the residential neighborhood in which it would be located. This Board cannot reasonably determine that all conditions for an unclassified use permit have been met and must therefore deny the petition.

Respectfully submitted,



Jack H. Blaine



Rita M. Theisen

³ The regulations explicitly place the burden on Petitioner to present “sufficient factual evidence to support findings of fact that allow the Board to reasonably reach each of the required conclusions.” [Sec. 18.8]

7-21-2016
red



July 20, 2016

Re: Fox Solar, LLC
Solar Project
5301 Flood Road
Great Falls, MT

PURPOSE

I have been asked to give my expert opinion as to the feasibility of using trees and shrubs to screen the proposed solar project from adjacent homes and residential lots.

OBSERVATIONS

This week, I inspected the project location, checked and plotted elevations in the surrounding area, and reviewed the projects proposed landscape plan. Where the project is to be located is in a low area—with an average elevation of approximately 3420 feet—surrounded on all sides by higher terrain. The rise to the south and north is slight but to the west, where the housing developments of Henrys Lane, Larkspur, and Spring Tree are located, the elevation rises over 300 feet. The Molnar home to the east, adjoining along the southern end of the east property line of the proposed project, sits approximately 75' above the lowest point of project land.

ANALYSIS

The project owner has proposed using Ponderosa Pine for the tallest tree in the landscape plan they have submitted. Ponderosa Pine is a very good choice for our climate and conditions but a mature size of 100', as listed on the landscape plan, is not realistic in our area.

In his book, *Manual of Woody Landscape Plants*, Michael Dirr lists the average height of Ponderosa Pine as 60 to 100' with a width of 25 to 30'. Conditions would need to be nearly perfect to reach 100' and Great Falls is far from perfect when it comes to growing trees. Because of the low rainfall (under 15" per year), strong winds, and heavy soils in the area of the proposed solar plant, I believe, a more reasonable expectation would be 60 to 75'.

The expected growth rate for Ponderosa Pine varies from around 9" per year in poor growing conditions to 24" per year in excellent growing conditions. Water being a critical need, and given the fact that no irrigation system is proposed to maintain the plantings, I would expect somewhere between 12 to 18" per year at most. Michael Dirr estimates, given average growing conditions, that it would take between 40 and 50 years to reach 75'.

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PROJECTIONS

The Henrys Lane development is located directly west of the proposed solar project across Flood Road. The homes on the higher end of the development sit .3 miles away and about 75 feet above the project land. The Ponderosa Pine would have to reach a height of approximately 40' in order to completely screen the view of the panels. Starting with the proposed 8' pine and using the projected average growth rate, this would take 21 to 32 years.

Approximately, one mile to the southwest, where a majority of the Spring Tree development homes are located, it would take 35 to 45 years to completely screen the solar panels.

From the lots on the northern end of Spring Tree and from the Larkspur development, located .4 miles west and about 225' above the project land, the panels would be impossible to screen. Even if the pines were to reach 100', which would take 60 to 90 years, almost one quarter of the panels would still be visible.

The Molnar residence on Fox Farm Road is adjacent to and sits above the proposed solar project, about .2 miles east. The pines planted along the east property line would be at the lowest point on the property and the panels would rise to the west. It would be between 39 and 59 years before the panels would be completely screened from the Molnar home.

In the areas where the pines could eventually reach the height to provide screening, they still would not do so if planted at approximately 85' apart as shown on the plan.

CONCLUSIONS

The notes from the proposed Landscape Buffer Plan indicate there will be no irrigation system and that watering is to be "accomplished with hand water applications." Given that fact, I would expect the growth rate in years for the pines to be on the slow (high) end of the range. If a long term irrigation and maintenance plan is established, then we could expect growth closer to the low end of the range in years.

And finally, in order for one to expect the pines to provide 100% screening, one must assume a 100% survival rate for the trees. That is not likely in our area. Let's hope we do not see another Mountain Pine Beetle epidemic.

For the above reasons, I do not think the plan is feasible nor can one reasonably expect the solar project to become invisible in most of our lifetimes.



Credentials

- Bruce Forde is president of **Forde Nursery, Inc.**, a design/build landscape firm and retail nursery located in Great Falls, Montana, which he established in 1980.
- Forde has worked in the nursery and landscaping industry since 1973. He studied horticulture and landscape design at **North Dakota State University** and graduated with a Bachelor of Science degree in 1980.
- A member of the **Montana Nursery and Landscape Association** since 1981, Forde is a past president of the **MNLA** and served on the board of directors for 5 years.
- Forde has served on the **City of Great Falls Design Review Board, Park and Rec Master Plan Committee** for the City of Great Falls, **Great Falls Development Authority Board of Directors, Re-Leaf Great Falls Planning Board**, and the **Cascade County Weed and Mosquito Board**.

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rcd
7-21-2016

July 18, 2016

Cascade County Zoning Board of Adjustments

RE: Cypress Creek Renewables request for an unclassified use permit for Fox Solar

Dear Board Members,

My Name is Dave Campbell and I am a citizen of Cascade county and have been since 1969. I am a realtor/developer and have been in the real estate & development business in Great Falls since 1974. I am generally in favor of development in Cascade county that will foster healthy growth in jobs and increase the tax base for Cascade county. That being said I am in total disfavor of the proposed project for the following reasons: Upon reading the most recent revision of the Cascade County Zoning Regulations under Section 1, titled PURPOSE it is clear that this request for an Unclassified Use Permit is totally inappropriate. Section 1, purpose says: "These regulations are adopted for the purpose of promoting, improving and protecting the public health, safety, comfort, convenience and the general welfare of the people and property owners within Cascade county, exclusive of incorporated cities and towns. The fulfillment of this purpose is to be accomplished in seeking the following objectives: "

- I submit that the proposed project does not promote, improve or protect the comfort and convenience of the existing, heavily invested, rural residential property owners in this area.
- by definition section 1.6 says: its purpose is to protect residential, business, commercial and industrial areas alike from harmful encroachment by incompatible uses and TO INSURE THAT LAND ALLOCATED TO A CLASS OF USES SHALL NOT BE USURPED BY INAPPROPRIATE USES. A solar farm such as the one being proposed by Cypress Creek Renewables for the Fox Farm Area is a totally inappropriate use for a rural residential area such as this. At best a solar farm is a Light Industrial use and should built in a light industrial area. The proposed solar farm for the Fox Farm area is not in any way in harmony with the Rural residential use classification in the Fox Farm area
- Section 1.6 under Purpose says: "It's purpose is to foster a more rational pattern of relationship between residential, business, and industrial uses for the mutual benefit of all." There is no mutual benefit to the existing rural residential owners in the area. A solar farm would be a total eye sore to the area, and the existing homeowners in the area have a right to have the protection of the existing zoning which protects their right to a peaceful and aesthetically pleasing environment that is protected by the current zoning classification. A recent article written by developer/custom builder Tim Wilkinson and published in the June 30, 2016 issue of the Great Falls Tribune, made this point very clearly.

In summary, the proposed Fox Farm Area project is not in compliance with the existing zoning, would be an unsightly addition to the neighborhood and, in my opinion as a licensed real estate broker and land developer, would substantially reduce the adjoining and surrounding property values in the area. For these reasons alone the request should be denied. This project clearly belongs in a Light Industrial zoning area. The fact that there is an electrical sub-station nearby on Dick Road is the only reason the request was even made for the Fox Farm rural residential area. In other words it is convenient

cheaper for the developers to get an approval close to a sub-station. It's a bad idea & not fair to the rural residential neighborhood. Please deny this request.

Dave Campbell
Real Estate Broker/ Developer
1034 17th Ave SW
Great Falls, Montana 59404
Phone: 406 799 1696

A handwritten signature in cursive script that reads "Dave Campbell". The signature is written in dark ink on a white background.

CASCADE COUNTY ZONING REGULATIONS

(Updates to Sections 1, 2, 7, 8, 9, 10, 12, & 18)

Updated March 4, 2016

SECTION 1. PURPOSE

These regulations are adopted for the purpose of promoting, improving and protecting the public health, safety, comfort, convenience and the general welfare of the people and property owners within Cascade County exclusive of incorporated cities and towns. The fulfillment of this purpose is to be accomplished by seeking the following objectives:

- 1.1 To provide for compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- 1.2 To ensure proper living and working conditions and to prevent the development of blight and slums;
- 1.3 To establish adequate standards for the provision of light, air, and open spaces;
- 1.4 To facilitate the provision of adequate transportation, and of other requirements and services such as water, sewerage, schools, open space, and parks;
- 1.5 To zone all properties with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout Cascade County;
- 1.6 To protect residential, business, commercial, and industrial areas alike from harmful encroachment by incompatible uses and to ensure that land allocated to a class of uses shall not be usurped by inappropriate uses;
- 1.7 To avoid the inappropriate development of lands and provide for reduction of flood damage;
- 1.8 To fix reasonable zoning standards to which buildings and structures shall conform;
- 1.9 To prevent such additions to, and alterations or remodeling of, existing buildings or structures as would not comply with the restrictions and limitations imposed herein;
- 1.10 To foster a more rational pattern of relationship between residential, business, and industrial uses for the mutual benefit of all;
- 1.11 To isolate or control the location of unavoidable nuisance producing uses;
- 1.12 To define the powers and duties of the administrative and enforcement officers and bodies; and
- 1.13 To prescribe penalties for any violation of the provisions of this ordinance, or of any amendment thereto.

The standards and requirements contained in these regulations and the district mapping reflected on the Zoning Map referenced in Section 4 herein, are intended to implement the Cascade County Zoning Regulations of the Board of County Commissioners of Cascade County, Montana.

1.2 Interpretation, Conflict with Other Laws

- 1.2.1 In their interpretation and application, the provisions of these regulations shall be held to be minimum requirements, adopted for the promotion of public health, safety or the general welfare.